

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,

v.

JULIUS M. GLADNEY,  
Defendant.

No. CR-05-6023-FVS

ORDER DENYING DEFENDANT'S  
MOTION FOR JUDGMENT OF  
ACQUITTAL

**BEFORE THE COURT** is Defendant's motion for judgment of acquittal (Ct. Re. 94). Defendant is represented by Nicholas Marchi. Plaintiff is represented by Assistant United States Attorney Robert Ellis.

**I. PROCEDURAL HISTORY**

Counts I through III of the Superseding Indictment charged the Defendant with knowingly and intentionally distributing over 5 grams of a mixture of substance containing a detectable amount of cocaine in violation of 21 U.S.C. § 841(a)(1). On June 1, 2006, a jury found the Defendant guilty of all counts. The Defendant now moves for a judgment of acquittal on the basis that there was insufficient evidence to support his convictions.

**II. BACKGROUND**

The following summary of facts is provided for background purposes only. On July 1, 2005, the Government's confidential sources, Mr. Grisby and Miss. Meredith, arranged to meet the Defendant

1 at his barbershop in Pasco, Washington, to buy cocaine. Mr. Grisby  
2 and Miss. Meredith arrived at the barbershop at approximately 3:00  
3 p.m. During the next two hours, Mr. Grisby and Miss. Meredith entered  
4 and exited the barbershop several times and Mr. Grisby got his hair  
5 cut. Mr. Grisby and Miss. Meredith testified they were waiting for  
6 the barbershop to empty. While they were waiting, they had  
7 conversations with several individuals in vehicles who gathered in the  
8 parking lot outside the barbershop. During this time, Mr. Grisby and  
9 Miss. Meredith also walked down the street to a convenience store.  
10 While Mr. Grisby entered the store for approximately ten minutes,  
11 Miss. Meredith remained outside on the street and placed a phone call  
12 on her cell phone. At approximately 5:00 p.m., Mr. Grisby and Miss.  
13 Meredith entered the barbershop for the final time. Mr. Grisby  
14 testified he met the Defendant in the back room of the barbershop and  
15 gave the Defendant \$400 in exchange for 4.7 grams of cocaine base.  
16 Although Miss. Meredith remained in the front of the barbershop during  
17 this transaction and was not able to see what took place in the back  
18 room, she testified that a third person was also present and that the  
19 men remained in the back room for approximately 10 or 15 minutes.

20 On July 6, 2005, Mr. Grisby arranged to meet the Defendant to buy  
21 more cocaine. After communicating with the Defendant by phone, Mr.  
22 Grisby and Miss. Meredith met the Defendant at a residence. Shortly  
23 after they entered the residence, an unidentified male also entered  
24 the residence. Mr. Grisby testified he gave the Defendant \$650 in  
25 exchange for what later tested as 9.4 grams of cocaine. Mr. Grisby  
26 and Miss. Meredith both testified that the exchange took place in the

1 kitchen and that the unidentified male was also present in the  
2 kitchen. While the transaction took place, Miss. Meredith was sitting  
3 in the living room. She could not hear the conversation, but she  
4 testified she saw the Defendant hand Mr. Grisby "something" and then  
5 Mr. Grisby gave the Defendant money. The government agents who were  
6 conducting surveillance outside the residence testified that Mr.  
7 Grisby and Miss. Meredith exited the residence approximately five  
8 minutes after the unidentified male exited the residence.

9 On July 19, 2005, after communicating by phone, Mr. Grisby and  
10 Miss. Meredith met the Defendant at a different residence. Mr. Grisby  
11 testified he exchanged money with the Defendant for cocaine. The  
12 agents testified Mr. Grisby paid the Defendant \$650 for 9.2 grams of  
13 cocaine base. Miss. Meredith testified she saw the Defendant hand Mr.  
14 Grisby "something" and Mr. Grisby then handed money to the Defendant.

### 15 **III. ANALYSIS**

16 On a motion for judgment of acquittal under Federal Rule of  
17 Criminal Procedure 29(c), the Court reviews the sufficiency of all the  
18 evidence presented at trial in the light most favorable to the  
19 government. *United States v. Alston*, 974 F.2d 1206, 1210 (9th Cir.  
20 1992). A motion for judgment of acquittal must be denied "if, viewing  
21 the evidence in the light most favorable to the prosecution, any  
22 rational trier of fact could have found the essential elements of the  
23 crime beyond a reasonable doubt." *United States v. Magallon-Jimenez*,  
24 219 F.3d 1109, 1112 (9th Cir. 2000) (citing *Jackson v. Virginia*, 443  
25 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). To sustain a  
26 conviction for distribution of cocaine base, the government must prove

1 the Defendant (1) knowingly delivered 5 grams or more of a substance  
2 containing a detectable amount of cocaine base and (2) he knew the  
3 substance was cocaine base or some other prohibited drug.

4 Defendant first argues there was insufficient evidence to support  
5 the jury's verdict because there was no evidence submitted showing he  
6 knew the substance delivered was cocaine or a prohibited drug.  
7 Specifically, Defendant points to the absence of any fingerprint  
8 evidence. The Government argues the Defendant had to know he was  
9 selling a controlled substance because he received several hundred  
10 dollars for only a few grams of a white substance. This, the  
11 Government argues, is indicative of a narcotics transaction and  
12 sufficient evidence from which the jury could infer knowledge.

13 "Circumstantial evidence may prove knowledge or intent in cases  
14 involving possession or importation of large quantities of narcotics."  
15 *United States v. Barbosa*, 906 F.2d 1366, 1368 (9th Cir. 1990) (citing  
16 cases). "[M]ere possession of a substantial quantity of narcotics is  
17 sufficient to support an inference that a defendant knowingly  
18 possessed the narcotics." *Id.*; see e.g., *United States v. Collins*,  
19 764 F.2d 647, 652 (holding defendant's shipment containing eight and  
20 one-half pounds of cocaine sufficient to support inference that  
21 defendant knowingly possessed the narcotics); *United States v. Guzman*,  
22 446 F.2d 1137, 1139 (9th Cir. 1971) (evidence of possession of  
23 contraband "serves as a substantial basis to draw an inference of ...  
24 knowledge."); cf. *United States v. Walitwarangkul*, 808 F.2d 1352, 1354  
25 (9th Cir. 1987) (holding defendant's actual possession of suitcase  
26 containing over one kilogram of heroin adequate to support conviction

1 when coupled with other circumstantial evidence).

2 Here, the drug quantities exchanged may not be "substantial"  
3 enough to independently support an inference that the Defendant knew  
4 the substance was a prohibited drug. The Defendant's knowledge,  
5 however, may be inferred from the additional circumstantial evidence  
6 that he received hundreds of dollars for the small amount of white  
7 substance he sold to Mr. Grisby and the circumstances surrounding  
8 those three different transactions. The Court concludes the  
9 Government presented sufficient evidence from which the jury could  
10 infer the Defendant knew the substance he was selling was cocaine or  
11 some other prohibited drug.

12 Next, Defendant argues there was insufficient evidence to support  
13 the jury's verdict because the only evidence supporting his  
14 convictions was the testimony of Mr. Grisby and Miss. Meredith, the  
15 Government's confidential sources. The Defendant contends their  
16 testimony was not credible and therefore insufficient to support his  
17 conviction. The Defendant relies on *United States v. Earl*, 27 F.3d  
18 423, 425 (9th Cir. 1994), which held that the uncorroborated testimony  
19 of a paid informant is insufficient to prove constructive possession  
20 if it is "incredible or insubstantial."

21 In *Earl*, the Ninth Circuit reversed the defendant's conviction  
22 for possession of cocaine with intent to deliver because it was based  
23 entirely on a paid informant's testimony that lacked substantiality.  
24 Although the court noted the paid informant's testimony was "replete  
25 with contradictory statements" and therefore lacked credibility, the  
26 court rested its decision on the informant's "lack of substantiality"

1 rather than lack of credibility.<sup>1</sup> *Id.* Here, the Defendant argues  
2 only that Mr. Grisby and Miss. Meredith were incredible, not that  
3 their testimony was insubstantial.

4 Defendant summarily argues the testimony of Mr. Grisby and Miss.  
5 Meredith was incredible, but Defendant does not provide any examples  
6 from the record and does not point to any specific contradictions in  
7 their testimony. Most of Mr. Grisby's testimony was corroborated by  
8 Miss. Meredith and independent surveillance by the Government. With  
9 respect to the transactions occurring on July 6, 2005, and July 19,  
10 2005 (Counts II and III), Miss. Meredith testified that she personally  
11 witnessed the exchanges between the Defendant and Mr. Grisby. The  
12 Court cannot say the testimony of Mr. Grisby and Miss. Meredith was  
13 incredible on its face.

14 It is the province of the trier of fact "to determine the  
15 credibility of witnesses, resolve evidentiary conflicts, and draw  
16 reasonable inferences from proven facts." *United States v. Goode*, 814  
17 F.2d 1353, 1355 (9th Cir. 1987). Here, as the trier of fact, the jury  
18 had the opportunity to hear all the evidence and to consider defense  
19 counsel's interpretation of it. Despite defense counsel's attempt to  
20 impeach Mr. Grisby and Miss. Meredith, the jury found their testimony  
21 credible. Viewing the evidence as a whole and in the light most  
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23 <sup>1</sup> In *Earl*, DEA agents found the defendant inside a residence  
24 containing drugs, drug paraphernalia, and weapons and an  
25 informant testified that the defendant stayed at the residence  
26 and that he was known as the "crime king." 27 F.3d at 425. The  
Ninth Circuit held this evidence was insufficient to show the  
defendant was the owner or occupant of the residence in question  
or he was otherwise in constructive possession of the drugs  
seized. *Id.*

1 favorable to the Government, the Court concludes a rational trier of  
2 fact could have found the Defendant guilty of all three counts of  
3 distribution. The Government produced sufficient evidence that, if  
4 accepted by the jury, would have proved the elements of the offense  
5 beyond a reasonable doubt. Accordingly,

6 **IT IS HEREBY ORDERED** that the Defendant's Motion for Judgment of  
7 Acquittal (Ct. Rec. 94) is **DENIED**.

8 **IT IS SO ORDERED.** The District Court Executive is hereby  
9 directed to enter this Order and furnish copies to counsel.

10 **DATED** this 27th day of July, 2006.  
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12  
13 s/ Fred Van Sickle  
14 Fred Van Sickle  
15 United States District Judge  
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